

Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242  
(214) 767-8967

Asher Bublick  
for the United States Trustee  
asher.bublick@usdoj.gov

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	
	§	<b>Case No. 22-31740-sgj11</b>
<b>THE JUMBA, LLC,</b>	§	
	§	<b>Chapter 11</b>
<b><i>Debtor.</i></b>	§	

**UNITED STATES TRUSTEE’S OBJECTION TO DEBTOR’S MOTION TO SELL**

TO THE HONORABLE SCOTT W. EVERETT, U.S. BANKRUPTCY JUDGE:

William T. Neary, the United States Trustee for Region 6 (the “**United States Trustee**”), files this Objection to *Debtor’s Motion to Sell Property of the Estate Free and Clear of Liens, Claims, and Encumbrances under 11 U.S.C. § 363(b) and (f) with Liens Attaching to Proceeds and Remaining Raw Land* [ECF No. 2]. In support, the United States Trustee would show:

**Facts and Procedural History**

1. Debtor is in the business of land development.
2. Debtor owns raw land in Parker, Jack, and Johnson Counties.
3. Debtor filed its voluntary chapter 11 petition in the United States Bankruptcy Court for the Northern District of Texas on September 23, 2022.
4. The United States Trustee is presently soliciting interest among Debtor’s unsecured creditors to serve on the Official Committee of Unsecured Creditors (the “**Committee**”).

5. Debtor's Initial Debtor Interview with the United States Trustee is scheduled to occur on October 11, 2022.

6. The section 341 meeting of creditors is set for November 2, 2022.

7. At the time of this filing, Debtor has neither filed its schedules nor statement of financial affairs.

8. On September 23, 2022, *Debtor's Motion to Sell Property of the Estate Free and Clear of Liens, Claims, and Encumbrances under 11 U.S.C. § 363(b) and (f) with Liens Attaching to Proceeds and Remaining Raw Land* (the "**Motion to Sell**") [ECF No. 2] was filed.

9. The Debtor states that it had six homes substantially completed and scheduled for closings in early August but was ultimately unable to obtain commitments from the various homebuyers and their lenders that all would be ready to close by the maturity date of its note obligation to C&G Realty E, LLC ("**C&G**"), the lienholder of Debtor's 556.81 acres in Johnson County (the "**Johnson County Property**").<sup>1</sup> Motion to Sell at ¶ 4.

10. After C&G rejected Debtor's offer for a forbearance, the Johnson County Property was posted for foreclosure sale on October 4, 2022. *Id.* at ¶ 9.

11. The Debtor avers that the Motion to Sell was filed "due to Debtor's lienholder on the Johnson County Property refusing to provide partial lien releases to close on six (6) homes under contract at this time." *Id.* at 1.

12. The Debtor states that it "seeks to proceed with sales of the homes on its Johnson County Property, free and clear of liens, with the C&G lien attaching to the net proceeds followed by full payment on C&G's secured claim after the sale of these homes." *Id.* at ¶ 14.

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<sup>1</sup> The Debtor avers that the C&G sold the John County Property to Debtor for the purchase price of \$4,538,001.50 and that the Johnson County Property is currently worth at least \$15 million without taking into the account the fact that approximately 60 acres have been improved with six luxury homes. *Id.* at ¶¶ 1, 8, 11-12.

13. Although a motion to employ a real estate broker has not been filed, the Debtor avers that

[a]s each sale closes, the net proceeds (after taxes, title insurance, *realtor commissions* and escrow agent fees) will go into an escrow account with Priority Settlement Services and C&G's lien will transfer from the homes and lots to the cash.

*Id.* at ¶ 19 (emphasis added).

14. After the sale of the six homes

Debtor will then seek authority to pay the lump sum to C&G in exchange for an executed release of its lien on all of the Johnson County Property and a Cancellation of the Note and Security Agreement and Release of the Deed of Trust in recordable form.

If the updated payoff is disputed, this Court shall determine the lien amount to be paid. However, if undisputed, payment and releases can be accomplished as in the ordinary course of the Debtor's business.

*Id.* at ¶¶ 23-24.

### **Argument**

#### **Debtor needs to show that the sale is exercise of valid business judgment and in good faith**

15. A sale of debtor's assets under § 363 is subject to court approval and "must be supported by an articulated business justification, good business judgment, or sound business reasons." *In re ASARCO, L.L.C.*, 650 F.3d 593, 601 (5th Cir. 2011) (quoting *In re Moore*, 608 F.3d 253, 263 (5th Cir.2010)).

16. The United States Bankruptcy Court for the Northern District of Texas has articulated the factors to be considered in evaluating business justification and good faith for § 363 sales within Standing Order 2000-7, "Guidelines for the Early Disposition of Assets in Chapter 11 Cases" (the "**Sales Guidelines**"). See [https://www.txnb.uscourts.gov/sites/txnb/files/general-ordes/2000\\_7%281%29.pdf](https://www.txnb.uscourts.gov/sites/txnb/files/general-ordes/2000_7%281%29.pdf).

17. While the Sales Guidelines are intended to apply to cases in which a debtor seeks approval to sell substantially all its assets within the first 60 days of the case, it still provides useful guidance as to what information the Court and interested parties may need.

18. This information includes, but is not limited to:

- i. a statement of all contingencies to the sale agreement, with a copy of the agreement;
- ii. an itemization and estimation of administration expenses related to the proposed sale;
- iii. an estimate of gross sales proceeds, along with an estimate of net proceeds;
- iv. debtor's debt structure;
- v. a discussion of alternatives to the sale.
- vi. a description of the negotiations and details of any other offers to purchase;
- vii. an explanation of marketing efforts;
- viii. a statement identifying the buyer and setting forth all of the buyer's connections;
- ix. the buyer's post-sale relationship with debtor;
- x. the purchaser's relationship with secured creditors; and
- xi. any proposed compensation to be paid to debtor's insiders.

Sales Guidelines.

19. The Motion to Sell provides none of this information. Instead, it provides little more than the number of homes to be sold, the range of the sales prices for the six homes, and a representation that "[t]he sales should yield approximately \$3,000,000.00 with the agreement by the builder to take nothing on its constitutional liens out of these sales." *See* Motion to Sell at ¶¶

15-16. Creditors and the Court are entitled to more information. Debtor needs to prove to the Court that this sale is a valid exercise of its business judgment and that the sale is in good faith.

20. The Fifth Circuit Court of Appeals has held that a debtor may not use § 363 to bypass Bankruptcy Code protections. See *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). Were Debtor seeking to dispose of assets through a plan of reorganization, it would be required to provide certain information via a disclosure statement. See 11 U.S.C. § 1125. The Motion to Sell should be denied because it does not provide adequate information.

**Debtor needs to show immediate and irreparable harm if Motion to Sell is not granted**

21. Bankruptcy Rule 6003 mandates that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting. . . a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate.” FED. R. BANKR. P. 6003.

22. This case was filed less than a week ago and the United States Trustee is still in the process of soliciting interest among Debtor’s unsecured creditors to serve on the Official Committee of Unsecured Creditors. The (potential) Committee may have a different perspective than the Debtor and should be given the opportunity to consider the Motion to Sell.

23. Further, although the Debtor states that “[a]s each day passes, the increase in inventory on the market, and changing interest rates . . . jeopardize the Debtor’s ability to close on all six (6) homes with the original buyers” [Motion to Sell at ¶ 8] and that it is accruing interest at a rate of \$573.37 per day [Motion to Sell at ¶17], Debtor has not shown that relief is necessary to avoid immediate and irreparable harm to protect its “substantial equity in the Johnson County Property”<sup>2</sup> [Motion to Sell at ¶14] given the protection of the automatic stay.

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<sup>2</sup> As Debtor has not filed its schedules and statement of financial affairs yet, it is not possible to calculate what percentage of the Bankruptcy estate the sales contemplated by the Motion to Sell represent.

**No broker fee should be paid until the Court separately approves both broker's employment and compensation**

24. The Sales Motion proposes that “[a]s each sale closes, the proceeds (after taxes, title insurance, *realtor commissions* and escrow agent fees) will go into an escrow account with Priority Settlement Services and C&G’s lien will transfer from the homes and lots to the cash.” Sales Motion at ¶ 19 (emphasis added). However, Debtor has neither filed an application seeking approval of broker’s retention under 11 U.S.C. § 327(a) nor has it filed an application seeking the Court’s authority to pay broker under 11 U.S.C. § 330(a). While the United States Trustee does not object to the escrowing of broker’s proposed commission at this time, no payment to the broker should be made until both employment and compensation are approved by the Court.

**Prayer**

Wherefore, the United States Trustee respectfully requests that the Court enter an order denying the Motion to Sell. The United States Trustee also requests any other relief to which the United States Trustee may be entitled.

Dated: September 29, 2022

Respectfully submitted,

WILLIAM T. NEARY  
UNITED STATES TRUSTEE

/s/ Asher M. Bublick

Asher M. Bublick  
Texas State Bar No. 24113629  
Office of the United States Trustee  
1100 Commerce Street, Room 976  
Dallas, Texas 75242  
(214) 767-8967  
asher.bublick@usdoj.gov

**CERTIFICATE OF SERVICE**

I certify that on September 29, 2022, that I sent a copy of the forgoing document via ECF and via first class United States mail to the attached service list.

/s/ Asher M. Bublick

Asher M. Bublick

Label Matrix for local noticing

0539-3

Case 22-31740-sgj11

Northern District of Texas

Dallas

Thu Sep 29 12:07:42 CDT 2022

Johnson County

c/o Perdue Brandon Fielder et al

500 E Border Street

Suite 640

Arlington, TX 76010-7457

The Jumba, LLC

P.O. Box 7085

Ft. Worth, TX 76111-0085

Darrell James Dumas

301 Plum Street

Aledo, Texas 76008-4321

Johnson County TAC

2 N Mill St

Cleburne, TX 76033

Pamela Diane Cunningham

6924 Kingsley Drive

Ft. Worth, Texas 76134-3816

United States Trustee

1100 Commerce Street

Room 976

Dallas, TX 75242-0996

Alvarado, TX

% Perdue Brandon Fielder Et Al

500 E. Border Street

Suite 640

Arlington, TX 76010-7457

Parker CAD

Linebarger Goggan Blair &amp; Sampson, LLP

c/o Sherrel K. Knighton

2777 N Stemmons Fwy, Ste 1000

Dallas, TX 75207-2328

1100 Commerce Street

Room 1254

Dallas, TX 75242-1305

Jack County TAC

100 N Main St #209

Jacksboro, TX 76458-1797

Leland B. Little

1213 Forest Park Dr.

Weatherford, Texas 76087-2805

Parker County Tax Assessor

1112 Santa Fe Drive

Weatherford, TX 76086-5827

Lyndel Anne Vargas

Cavazos Hendricks Poirot, P.C.

900 Jackson St., Suite 570

Dallas, TX 75202-2413

C&amp;G Realty E, LLC

P.O. Box 1408

Montgomery, TX 77356-1408

Perrin - Whitt CISD

Linebarger Goggan Blair &amp; Sampson, LLP

c/o Sherrel K. Knighton

2777 N. Stemmons Fwy. Ste. 1000

Dallas, TX 75207-2328

C&amp;G Realty E, LLC

4413 Carey Street

Ft. Worth, Texas 76119-4219

James Lanter, PC

James Lanter

560 N. Walnut Creek, Suite 120

Mansfield, Texas 76063-3238

Mark J. Petrocchi

GRIFFITH, JAY &amp; MICHEL, LLP

2200 Forest Park Blvd.

Fort Worth, TX 76110-1732

Tri County Utilities

1623 Weatherford Hwy

Aledo, TX 76008

End of Label Matrix

Mailable recipients 19

Bypassed recipients 0

Total 19